

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for the Environment

Antarctic Treaty (Environment Protection) Act 1980 (Cth)

Antarctic Treaty (Environment Protection) Amendment (2012 to 2014 Measures-Protected and Managed Areas) Proclamation 2014

Subsection 8(2) of the *Antarctic Treaty (Environment Protection) Act 1980* (the **Act**) provides that the Governor-General may, by Proclamation, declare an area specified in the Proclamation to be an Antarctic specially protected area (**ASPA**) and, by the same or another Proclamation, may declare an area specified in the Proclamation to be an Antarctic specially managed area (**ASMA**). However, subsection 8(3) of the Act provides that an area may not be declared to be an ASPA or an ASMA unless the Antarctic Treaty Consultative Parties have adopted a management plan in respect of the area under Article 6 of Annex V to the Madrid Protocol. Subsection 8(6) of the Act provides that the Governor-General may, by Proclamation, vary the boundaries of an ASPA or ASMA in accordance with an amendment of the management plan adopted by the Antarctic Treaty Consultative Parties. Subsection 8(6) also provides that the Governor-General may, by Proclamation, revoke a declaration of an ASPA or ASMA if the management plan in respect of the ASPA or ASMA has been revoked.

Australia is an Antarctic Treaty Consultative Party under the Antarctic Treaty and the Proclamation seeks to give effect to measures agreed to by Antarctic Treaty Consultative Parties under the Protocol on Environmental Protection to the Antarctic Treaty in domestic law.

The purpose of the Proclamation is to amend the *Antarctic Treaty (Environment Protection) Proclamation 2007* (the **Principal Proclamation**) by declaring three new ASPAs, varying the boundaries of 18 ASPAs, varying the boundaries of one ASMA, revoking the declarations of three ASPAs and revoking the declaration of one ASMA. The Proclamation also makes consequential amendments to remove four additional ASPAs that ceased operation on 31 December 2010, and to repeal spent sections.

The Proclamation declares the boundaries of the following three new ASPAs:

- Cape Washington and Silverfish Bay, Northern Terra Nova Bay, Ross Sea (ASPA No. 173);
- Stornes, Laresmann Hills, Princess Elizabeth Land (ASPA No. 174); and,
- High Altitude Geothermal Sites of the Ross Sea Region (including parts of the summits of Mount Erebus, Ross Island and Mount Melbourne and Mount Rittmann), northern Victoria Land (ASPA No. 175)

The new ASPAs were adopted at the 36th and 37th Antarctic Treaty Consultative Meeting (**ATCM**), along with associated management plans.

The Proclamation varies the boundaries of the following existing 18 ASPAs and one ASMA declared under the Principal Proclamation:

- Moe Island, South Orkney Islands (ASPAs No. 109);
- Southern Powell Island and adjacent islands, South Orkney Islands (ASPAs No. 111);
- Coppermine Peninsula, Robert Island, South Shetland Islands (ASPAs No. 112);
- Litchfield Island, Arthur Harbor, Anvers Island, Palmer Archipelago (ASPAs No. 113);
- Lagotellerie Island, Marguerite Bay, Graham Land (ASPAs No. 115);
- Cape Royds, Ross Island (ASPAs No. 121);
- Barwick and Balham Valleys, Southern Victoria Land (ASPAs No. 123);
- Cape Crozier, Ross Island (ASPAs No. 124);
- Western Shore of Admiralty Bay, King George Island, South Shetland Islands (ASPAs No. 128);
- Potter Peninsula, King George Island (Isla 25 de Mayo), South Shetland Islands (ASPAs No. 132);
- Harmony Point, Nelson Island, South Shetland Islands (ASPAs No. 133);
- Cierva Point and Offshore Islands, Danco Coast, Antarctic Peninsula (ASPAs No. 134);
- Parts of Deception Island, South Shetland Islands (ASPAs No. 140);
- Yukidori Valley, Langhovde, Lützow-Holm Bay (ASPAs No. 141);
- Svarthamaren, Mühlig-Hofmannfjella, Dronning Maud Land (ASPAs No. 142);
- Botany Bay, Cape Geology, Victoria Land (ASPAs No. 154);
- Mawson’s Huts, Cape Denison Commonwealth Bay, George V Land, East Antarctica (ASPAs No. 162);
- Marion Nunataks, Charcot Island, Antarctic Peninsula (ASPAs No. 170), and;
- Deception Island, South Shetland Islands, Antarctica (ASMA No. 4).

The variation of the boundaries of these ASPAs and one ASMA in the Proclamation reflects amendments adopted by the 35th, 36th and 37th ATCM to vary the boundaries in the management plans of these ASPAs and ASMA.

The Proclamation revokes the declaration of the following three ASPAs and one ASMA declared under the Principal Proclamation:

- Summit of Mount Melbourne, Victoria Land (ASPAs No. 118);
- Tramway Ridge, Mount Erebus, Ross Island (ASPAs No. 130);
- Northern Coronation Island, South Orkney Islands (ASPAs No. 114), and;
- Cape Denison, Commonwealth Bay, George V Land, East Antarctica (ASMA No. 3).

The revocation of these ASPAs and one ASMA in the Proposed Proclamation reflects decisions by the 37th ATCM to revoke management plans in relation to those areas and de-designate them as ASPAs and ASMAs.

All relevant Treaty Parties, including Australia, unanimously agreed to the all the measures listed above at the 35th, 36th and 37th ATCMs.

ASPAs and ASMAs are designated in order to protect outstanding environmental, scientific, historic, aesthetic or wilderness values or ongoing planned scientific research.

Paragraph 19(1)(d) of the Act makes it an offence for a person to enter or carry on any other activity in an ASPA. Paragraph 19(1)(e) of the Act makes it an offence for a person to carry on any activity in an ASMA otherwise than as authorised by the plan of management relating to the area.

Where an area is proclaimed to be an ASPA or an ASMA, the subsoil beneath any land or sea-bed, extending to 1000 metres below the surface, as specified in subsections 5(3) and (4) of the Principal Proclamation, is deemed to be within the area.

The Office of Best Practice Regulation has indicated that a Regulatory Impact Assessment is not required for the Proclamation as it is likely to have minor impacts on business (OBPR ID: 17270).

The Proclamation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and commences on the day after it is registered on the Federal Register of Legislative Instruments.

The details of the Proclamation are included in the **Attachment**.



Australian Government
Department of the Environment
Australian Antarctic Division

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

**Antarctic Treaty (Environment Protection) Amendment (2012 to 2014 Measures—
Protected Areas and Managed Areas) Proclamation 2014**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Australian legislation implements components of the Antarctic Treaty system into Australian law, including the *Antarctic Treaty (Environment Protection) Act 1980*, giving effect to the Protocol on Environmental Protection to the Antarctic Treaty, which sets out environmental protection obligations. Annex V to the Protocol provides a legal framework for the establishment of specially protected and managed areas within Antarctica. At each year's Antarctic Treaty Consultative Meeting new areas may be nominated, and existing areas may be updated and existing areas may be de-designated. This Legislative Instrument reflects those changes that have been made from 2012 to 2014.

Human rights implications

The Legislative Instrument engages the right to freedom of movement. The Antarctic Specially Protected Areas (ASPA) possess outstanding scientific, historical, environmental, aesthetic or wilderness values. It is reasonable, necessary and proportionate to restrict access to those areas in order to protect these values. This restriction is not absolute. Persons may still access an ASPA with a permit. To obtain a permit, persons must meet the prescriptions of the management plan.

Conclusion

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* for it is reasonable, necessary and proportionate.

Dr. Tony Fleming

Director

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October 2014

ATTACHMENT

Details of the *Antarctic Treaty (Environment Protection) Amendment (2012 to 2014 Measures–Protected Areas and Managed Areas) Proclamation 2014*

Section 1 – Name

This section provides that the name of the instrument is the *Antarctic Treaty (Environment Protection) Amendment (2012 to 2014 Measures–Protected Areas and Managed Areas) Proclamation 2014*.

Section 2 – Commencement

This section provides for the instrument to commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the instrument is made under section 8 of the *Antarctic Treaty (Environment Protection) Act 1980* (the **Act**).

Section 4 – Schedules

This section provides that each instrument specified in the Schedules is amended or repealed in accordance with the terms of the Schedule.

Schedule 1 - Amendments

Amendments in this Schedule refer to the *Antarctic Treaty (Environment Protection) Proclamation 2007* (the **Principal Proclamation**).

Item 1 amends the note at section 4 of the Principal Proclamation to make it clear that a number of expressions used in the Principal Proclamation are defined in the Act, and removes defined terms that are not needed.

Item 2 provides an update to the note at section 5 of the Principal Proclamation to provide an up-to-date reference to where further details of Antarctic Specially Protected Areas (**ASPAs**) and Antarctic Specially Managed Area (**ASMAs**) can be found on the internet.

Items 3 to 13 replace the existing boundaries of 18 ASPAs with new boundaries in accordance with management plans adopted by the 35th, 36th and 37th Antarctic Treaty Consultative Meetings (**ATCM**).

Item 14 declares and describes the area of three new ASPAs adopted by the 36th and 37th ATCMs.

Item 15 replaces the existing boundaries of one ASMA with new boundaries in accordance with the management plan adopted by the 35th ATCM.

Schedule 2 – Repeals

Amendments in this Schedule refer to the Principal Proclamation.

Item 1 repeals section 3 of the Principal Proclamation as it is spent.

Item 2 repeals section 6 of the Principal Proclamation as it is spent and consequential amendments have been made at Item 3.

Item 3 repeals the descriptions of seven ASPAs. The management plans for ASPAs 118, 130 and 114 (at Parts 18, 30 and 14 respectively of the Principal Proclamation) were revoked by the 37th ATCM. ASPAs 144, 125, 146 and 150 (at Parts 25, 44, 46 and 50 respectively of the Principal Proclamation) ceased to have effect on 31 December 2010 – as provided for in section 6 of the Principal Proclamation. The repeal of the Parts related to those ASPAs is a consequential amendment of the deletion of section 6 as a spent provision.

Item 4 repeals the description of ASMA No. 3, as the management plan was revoked by the 37th ATCM.